

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1229 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANSUKHBHAI GALABHAI
VERSUS
BALVANTSINH KALUSNH THAKORE

Appearance:

MR VK JOSHI for the Petitioners
None present for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 30/12/1999

C.A.V. JUDGMENT

1. Challenge has been made by the petitioners by this revision application to the order of the 2nd Extra

Assistant Judge, Panchmahals at Godhra below Ex. 37 in regular civil appeal No. 79 of 1987 under which the application filed by the petitioner for amendment of the plaint came to be rejected.

2. Learned counsel for the petitioner contended that the first appellate court has committed serious error of jurisdiction in rejecting the application filed by the petitioner for amendment of the plaint. It has next been contended that Order 6 Rule 17 of C.P.C. gives much more wide powers to the court to permit the parties to amend their pleadings at any stage of the proceedings. The appellate court has all the powers to permit the amendment of the plaint. Lastly it is contended that the amendment which is sought by the petitioners is purely a question of law and in normal course it should have been permitted. Carrying this contention further it is submitted that in such matters delay even if it is there in filing of the application it may not be a ground for rejection of the application. In his submission, this amendment is necessary for the court to decide the real controversy which has arisen between the parties finally.

3. I have given my thoughtful consideration to these contentions of the learned counsel for the petitioner.

4. Though the counsel for the petitioners has made an attempt and what he really intended to take decision on merits of the matter but I refrain myself from giving decision on merits for the reasons that it is only an interlocutory order. The first appellate court has rejected the application of the petitioners filed by them under Order 6 Rule 17, C.P.C. and if ultimately they fail in the appeal they have all the right to challenge this order in appeal to be filed before this court. Under section 115, C.P.C. it is difficult to appreciate and in fact time has come where it has to be discouraged to permit the litigation to stall the final adjudication of the appeal by challenging the interlocutory orders. Rightly or wrongly, the application has been rejected and that order of the court below is not final. It is always subject to correction by the higher court in appeal to be filed against the final decision in the matter. If this final adjudication of appeals are permitted by the revisional court to be stalled then it will give long life to litigations. It is not out of context to state here that the appeal filed by the petitioners before the first appellate court was of the year 1987 and they

filed the application for amendment of the plaint on 6th August, 1993 i.e. after about 6 years of filing of the appeal. It appears that when the appeal has come to the stage of final hearing to delay its disposal, this application has been filed. It is unfortunate that the first appellate court has taken more than one year and six months in deciding this application. Thereafter, this revision application has come up before this court and the court has stayed the proceedings of regular appeal, meaning thereby, the appeal remained pending for hearing for twelve years. In a matter where ultimately if the order is to be corrected, ample opportunity was available to the petitioner to get it corrected. In case the order impugned in this revision application is allowed to stand it will not occasion any failure of justice or will cause any irreparable injury as it challengeable in the appeal which is to be filed on failure of the petitioner in the first appellate court.

5. In the result, this civil revision application fails and the same is dismissed. Rule discharged. However, the dismissal of this revision application will not come in the way of the petitioners to challenge the legality, propriety and correctness of this order if ultimately they fail in appeal and wherein they decides to file second appeal before this court. Where the appeal of the petitioners is pending, it is hereby directed to dispose of the same within a period of three months from the date of receipt of writ of this order. Interim relief granted by this court stands vacated. No order as to costs.

zgs/-